

REMARKS

Applicants respectfully request consideration of the amendments to the claims as herein presented. Claims 1, 3, 5, 6, 16-23, 31-39, and 45 are pending. Claims 2, 4, 7-15, 24-30, and 40-44 have been cancelled. Claims 1, 3, 5, 34, 35, and 39 are amended herein and claim 45 is added.

Support for the amendment to claims 1, 3, and 5 is found in paragraph [0007] of the original specification. The amendments to claims 34 and 35 have been made to make those claims independent, and they are supported by paragraph [0089] of the specification as filed. Claim 39 has been amended to remove a member of the Markush group and is supported by paragraph [0083]. The addition of claim 45 is supported in paragraph [0089]. Entry of the amended claims, as well as reconsideration and allowance of all the pending claims is requested.

Objections

The objections to claim 4 are rendered moot by the cancellation of claim 4.

Claim Rejections - 35 U.S.C. § 112, second paragraph

The rejection of claim 39 under 35 U.S.C. § 112, second paragraph, as allegedly unclear in the recitation of “pDELia2_{FC5}-KDB2HL” is moot following the cancellation of that term in claim 39.

The rejection of claims 4-6, 11, 15, and 29-30 for alleged indefiniteness is moot for those claims that remain pending because the language stating “a sixth nucleic acid” and “a fifth nucleotide molecule” has been removed from the claims.

Claim Rejections - 35 U.S.C. § 112, first paragraph

The new matter rejection of claims 2-4 under 35 U.S.C. § 112, first paragraph, is moot as to claims 2 and 4 which have been cancelled. It is also moot as to claim 3, which has been

amended and no longer includes the language that was rejected. Similarly, the new matter rejection of claims 3 and 4 based on the functional limitation of ORF2 is also moot.

The new matter rejection of claim 8 is moot following cancellation of that claim.

The Office Action rejects claims 1-13, 15-23, 26-33, 37, 38, and 43 under 35 U.S.C. § 112, first paragraph, for alleged lack of written description and for alleged lack of enablement. Applicants submit that claim 1 and those claims that depend from claim 1 and remain pending are allowable as amended. The written description and enablement rejections were apparently made based on the percent identity limitations in the claims. These percent identity limitations no longer appear in the claims, and the claims should be allowed.

Claims 1-4 stand rejected under 35 U.S.C. § 112, first paragraph as separately failing to comply with the written description requirement. Due to the amendment to claims 1 and 3 and the cancellation of claims 2 and 4, this rejection is also moot and should be withdrawn.

Rejection - Alleged Double Patenting

Claims 1-13, 15-23, and 26-39 have been provisionally rejected under the double patenting doctrine in light of co-pending Application No. 10/771,695. Because both applications continue to undergo prosecution, Applicants choose not to file a terminal disclaimer in either at this time.

CONCLUSION

Applicants respectfully submit that the amendments and remarks set forth in this paper place this application in condition for allowance and such action is courteously requested at an early date. Prompt and favorable consideration of this Response and Amendment is requested. Applicants reserve the right to file continuation applications directed to any and all of the subject matter that may have been cancelled during the prosecution of this case. Any cancellation is not acquiescence to any point of argument made in an Office Action.

It is believed that this application is currently in condition for allowance. If communication with the Applicants' representative would hasten allowance, the Examiner is invited to call the undersigned at the number listed below.

Respectfully submitted,

Buchanan Ingersoll & Rooney PC

A handwritten signature in black ink, appearing to read "Duane A. Stewart III", with a stylized flourish at the end.

Dated: August 1, 2006

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